Office of Solid Waste (5305W)

Hazardous Waste Combustion (HWC) National Emission Standards for Hazardous Air Pollutants (NESHAP) Fact Sheet:

NOC/Title 5 Interface

EPA promulgated the Phase 1 Maximum Achievable Control Technology (MACT) standards, also called the National Emission Standards for Hazardous Air Pollutants(NESHAP), for hazardous waste burning incinerators, cement kilns, and lightweight aggregate kilns (64 FR 52828, September 30, 1999). These standards were promulgated under the joint authority of the Clean Air Act (CAA) and the Resource Conservation and Recovery Act (RCRA). Since 1999, we have issued several technical corrections and amendments to the Phase 1 HWC NESHAP to improve its implementation. In addition, we have also revised specific sections in response to vacaturs ordered by the Court of Appeals for the District of Columbia Circuit. Most notably, we promulgated negotiated interim emission standards that temporarily replace the 1999-promulgated MACT standards, and we extended the compliance date by one year. This fact sheet summarizes, for the convenience of all interested stakeholders, regulators, and industry, information on how we expect you to incorporate Notifications of Compliance (NOCs) into Title 5 permits, as articulated in the preamble to the final MACT standards (64 FR 52828), and any relevant amendments.

Background

On September 30, 1999, we promulgated the Phase 1 Hazardous Waste Combustion (HWC) National Emission Standards for Hazardous Air Pollutants (NESHAP) for hazardous waste burning incinerators, cement kilns and lightweight aggregate kilns (64 FR 52828). In this rule we required that sources conduct a comprehensive performance test (CPT) to demonstrate compliance with the emission standards and performance specifications for continuous monitoring systems, as well as, to establish operating parameter limits. We also required you to submit to your regulatory agency a Notification of Compliance (NOC) within 90 days of completion of the CPT. The NOC must document compliance or noncompliance with the emission standards and continuous monitoring system requirements. It must also identify all operating and monitoring parameter limits necessary to assure continued compliance with the standards. Sources must comply with all the parameter limits in the NOC once it is postmarked. See 40 CFR 63.1207(b) and 63.1207(j).

The September 30, 1999 rule also contained a requirement that sources begin subsequent emission testing within five years of the initial CPT and every five years thereafter. Each test was required to be followed by an NOC containing the new test results and any new operating and monitoring parameter limits. We have since temporarily replaced the 1999-promulgated

emission standards with negotiated interim standards in response to a July 24, 2001 decision by the Court of Appeals for the District of Columbia Circuit (CKRC v. EPA, 255 F.3d 855 D.C. Cir. 2001) and agreed to promulgate permanent replacement standards by June 14, 2005. Due to the short time frame between implementation of the interim standards and the permanent replacement standards, we waived the five-year periodic emission testing requirement for the interim standards. As a result, you are required to conduct only one CPT, the initial CPT, for the duration of the interim standards. Likewise, you are required to submit only one NOC, the initial NOC, while the interim standards are in place. See 67 FR 6792 and 6802, and 40 CFR 63.1207(d). We will address the subsequent periodic testing and NOC submittals when we promulgate the permanent replacement standards.

The information in this fact sheet provides general guidelines for the incorporation of NOCs into Title 5 permits, based on the existing permit revision procedures in 40 CFR parts 70 and 71. You should always check, however, with your permitting authority for the most current permit revision information and procedures. We plan to amend the permit revision procedures of part 70 and 71 in the future, which may require state permitting authorities to revise their permit revision procedures. Those new permit revision procedures may supercede the guidance given in this fact sheet.

Why do NOCs have to be included in Title 5 permits?

One of the criteria of the Title 5 regulations is that Title 5 permits must contain "emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." See 40 CFR §§70.6(a)(1) and 71.6(a)(1). Given the purpose and content of NOCs, incorporating them into a permit provides the foundation for ensuring that the permit meets this criterion. This is why we made it clear in the September 30, 1999 final rule that the operating requirements in the NOC constitute "applicable requirements" for the purposes of Title 5 permitting and that they must be incorporated into Title 5 permits. See 40 CFR §§63.1206(c)(1)(iv) and (v).

Why did EPA specify that the contents of NOCs are "applicable requirements"?

We specifically identified the contents of the NOC as "applicable requirements" because of their importance in assuring compliance with the emissions standards. Sources must follow the requirements in both the General Provisions (subpart A) of 40 CFR part 63, as well as those in the HWC NESHAP (subpart EEE), regarding the contents of the NOC. In brief, NOCs must include information such as: descriptions of air pollution control equipment (or method) for each emission point of hazardous air pollutants, methods used to demonstrate compliance, performance test results, and methods for determining continuous compliance (including descriptions of monitoring and reporting requirements and test methods).

Sources subject to the HWC NESHAP are not required to continuously monitor or evaluate what comes out of the stack on a daily basis (with the exception of carbon monoxide and hydrocarbons). We instead require you to continuously monitor applicable operating parameters that assure compliance with the emission limits. Most of these parameters are identified in 40 CFR §63.1209; others may be determined on a site-specific basis. During the performance test, you must manually sample the stack emissions to demonstrate compliance with the emission standards while simultaneously monitoring and recording operating parameter levels. The operating parameter levels then become enforceable limits that are used to assure your compliance with the emission standards on a continuous basis (i.e., when you are not conducting an emission test). Sources report the performance test results and the "proven" operating parameter limits to the regulatory agency in the NOC. These parameters are used to monitor compliance, so they clearly should be designated "applicable requirements."

How do I include the NOC in my Title 5 permit?

If you do not have a Title 5 permit at the time you are ready to submit your NOC, then you would likely include the NOC as part of your permit application. If, on the other hand, you do already have your permit, you will need to revise it to include your NOC. In the preamble to the September 30, 1999 Phase 1 HWC NESHAP rule, we provided guidance on how we expect the incorporation of the NOC into the permit to happen. This guidance is provided in the context of the current part 70 and part 71 regulations, which govern the timing and procedures for permit issuance, revisions, and renewals. You should refer to those requirements when obtaining or updating your permit. However, the Agency is currently revisiting the permit revision procedures (located in 40 CFR §§70.7 and 71.7), so we recommend you contact your permit writers to discuss a specific strategy for addressing your NOC.

Incorporating an Initial NOC

After you have conducted your initial CPT to demonstrate compliance with the interim standards, we expect that you will follow the procedures for significant permit revisions (see §§70.7(e)(4) or 71.7(e)(3)) when you are ready to incorporate the NOC into your permit. There are some key reasons why it is appropriate to use this level of permit revision for your first NOC.

- The significant permit revision procedures provide a level of public involvement when including monitoring requirements in Title 5 permits that is commensurate with the level available under RCRA. In RCRA, monitoring parameters are developed pursuant to trial burns and incorporated into permits either through initial issuance or through a RCRA class 2 or 3 permit modification (see 40 CFR 270.42). In either situation, significant opportunities exist for public review and input that are parallel to those available through initial Title 5 permit issuance or significant permit revision procedures.

- The regulations specify that every significant change in monitoring terms and conditions shall be considered significant for purposes of permit revision (see 40 CFR 70.7(e)(4)(i)). Since the initial NOC contains the operating parameter limits and monitoring information

that *demonstrated* your ability to operate within the emissions standards (previously you would have had only information about what you *anticipated* would allow you to meet the standards), we consider the initial NOC to contain significant changes.

- The review of a source's initial compliance demonstration and operating and monitoring parameter limits is not a simple one. It entails analyzing the comprehensive performance test data a source submits in its NOC and making a finding of compliance based on that data (as required under § 63.1206(b)(3) and 63.6(f)(3)). In some cases, the regulatory agency may determine that the best use of its resources is to conduct its review of the NOC for the finding of compliance determination at the same time as it considers your modification request to incorporate the NOC into your Title 5 permit.

Incorporating subsequent NOCs

Once we have promulgated the replacement standards, you will need to conduct a second CPT and submit an NOC that demonstrates compliance with those standards. Within five years of performing your replacement standards CPT, you must commence periodic testing as required under 40 CFR 1207(d).[1] We recommend that you coordinate your five-year CPT cycle with your five-year Title 5 permit term to the extent possible. This approach will allow changes in the NOC to be incorporated into the permit at renewal rather than through separate permit revisions. We recognize, however, that such coordination may not always be possible. At times it may be necessary to include information from the most recent NOC through a permit revision. The process you will follow in any particular situation will depend on how your permit is written, so you should discuss permit maintenance strategies with your permit writer. We expect that under the current part 70 and 71 rules your permitting authority will allow you to follow the procedures for minor permit revisions. See §§70.7(e)(2) or 71.7(e)(1). There are several reasons why it is appropriate to use this level of permit revision for subsequent NOCs.

- Based on our previous experience in regulating these source categories under RCRA , we expect that the initial set of operating parameters and monitoring information is likely to only need minor changes over time barring any significant design or operational changes made to the unit.

[1]The periodic testing requirements address both comprehensive performance testing and confirmatory performance testing. The purpose of confirmatory performance testing is to confirm compliance with the dioxin/furan emission standard while operating pursuant to conditions specified in 40 CFR 63.1207(g)(2). Sources are required to submit NOCs following both types of tests. Confirmatory performance testing requirements have been waived for the duration of the interim standards. Sources must conduct their first confirmatory test within 30 months of the initial replacement standards CPT. Sources are not required to establish new operating limits based on the confirmatory test. Therefore, although sources are required to submit an NOC for the confirmatory test, that NOC will not result in any changes to the operating limits contained in the NOC from the previous CPT, and will not result in a change to the Title 5 permit. Should the source fail its confirmatory performance test, it must conduct a new CPT.

- Since the initial NOC was included either through initial permit issuance or a significant permit revision, the information was already subject to review by both the regulatory agency and the public. Consequently, the public should have a clear understanding of your compliance obligations. Any modifications added to the permit through the minor permit revision procedures can be reviewed by the public at the time of permit renewal.

- You and your regulatory agency will also be more experienced in setting operating parameter limits and monitoring systems to ensure compliance with performance standards. Since you both will already have been through the process at least once before, and worked through any issues with analyzing the test results, the process does become more easily replicable.

- Using the minor permit modification process for addressing subsequent NOCs will allow you to meet compliance obligations you have under both the HWC NESHAP requirements in part 63 and the Title 5 requirements in parts 70 or 71.

    - On one hand, §§63.1207(j)(1)(ii) and 63.1210(b) require you to comply with the operating parameter limits and monitoring requirements upon postmark of your NOC. These sections also direct you to comply with the most recent NOC, stating that upon postmark of the "new" NOC, the requirements in your Documentation of Compliance (with regard to the initial NOC) or previous NOCs no longer apply.

    - On the other hand, the Title 5 regulations in parts 70 and 71 require you to comply with the conditions in your permit. This means that once the requirements of an NOC are in your permit, you must comply with those requirements until the permit is changed. If any of the requirements of an NOC change due to recent testing, you would be required to comply with two sets of conflicting requirements -- those in the most recently postmarked NOC and those already in the permit from the previous NOC.

    - The minor permit revision regulations provide a solution for this situation.

    - Under §§70.7(e)(2)(v) and 71.7(e)(1)(v), your State program may allow you to make the change proposed in your minor permit modification application immediately after filing the application.

    - Following this, you must comply with the applicable requirements governing the change and you must comply with your *proposed* permit terms and conditions (i.e., the information in the NOC you are incorporating into your permit). According to these regulations, you do not have to comply with the existing permit terms and conditions you are seeking to modify.

    - If you follow this approach, we recommend you include your NOC with your permit modification application.

For More Information

Phase 1 HWC NESHAP Final Rule - *Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors* (64 **FR** 52828, September 30, 1999). See Part Five, Section B.2.*What is the Relationship Between the Notification of Compliance and the Title 5 Permit? (p. 52977).* Internet Address: http://www.epa.gov/hwcmact/preamble.htm

Title 5 Operating Permits Fact Sheet - HWC NESHAP Toolkit. Internet Address: http://www.epa.gov/epaoswer/hazwaste/combust/toolkit/titlevfs.pdf

Implementation Time Line & Milestones - HWC NESHAP Toolkit. Internet Address: http://www.epa.gov/epaoswer/hazwaste/combust/toolkit/milestne.htm